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6 Attorneys for Defendant City of San Diego
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 TRACY MEANS,

11 Plaintiff,

12 v.

13 CITY OF SAN DIEGO, a municipal corporation
14 and a Political Subdivision of the State of
California, and DOES 1-30, inclusive,

15 Defendant.
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Case No. 08cv0580 WQH (POR)

**DEFENDANT'S SUPPLEMENTAL
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF ITS MOTION UNDER:
FRCP 12(b) TO DISMISS; FRCP 12(e)
FOR MORE DEFINITE STATEMENT;
AND 12(f) TO STRIKE PORTIONS**

**NO ORAL ARGUMENT UNLESS
REQUESTED BY COURT**

Judge: Hon. William Q. Hayes

Courtroom: 4

Date: June 9, 2008

Time: 11:00 a.m.

Magistrate: Hon. Louisa S. Porter

20 Pursuant to Federal Rules of Evidence 201, Defendant City of San Diego hereby
21 requests the court take judicial notice of two additional documents attached hereto:

22 6. Defendant's and Respondent's Notice of Cross-Appeal [Tracy Means'
23 cross-appeal in Means 1, served February 22, 2008]; and

24 7. Defendant's and Respondent's Notice of Abandonment of Cross-appeal
25 [Tracy Means' cross appeal in Means 1, served March 21, 2008].

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ARGUMENT

Judicial notice of these documents is proper pursuant to rule 201(b) for the Federal Rules of Evidence, which permits courts to take judicial notice of facts that are “not subject to reasonable dispute in that [they are] either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed.R.Evid. 201(b). The Federal Rules direct courts to take judicial notice of such matters “if requested by a party and supplied with the necessary information.” Fed.R.Evid. 201(d). This court may judicially notice and consider the aforementioned documents in deciding the City’s Motion to Dismiss. In deciding a motion to dismiss, the Court is not limited to the contents of the complaint. Rather, “[w]hen ruling on a motion to dismiss, the court may consider the facts alleged in the complaint, documents attached to the complaint, documents relied upon but not attached to the complaint when authenticity is not contested, *and matters of which the court takes judicial notice.*” *In re Peerless Sys., Corp. Sec. Litig.*, 182 F. Supp. 2d 982, 987 n.2 (S.D. Cal. 2002) (emphasis added); see also *Parrino v. FHP Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998) (in ruling on a motion to dismiss, courts may take judicial notice of documents “whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff’s] pleading”) (quoting *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994)). This well-established application of judicial notice is designed to prevent plaintiffs from avoiding Rule 12 dismissal “by deliberately omitting references to documents upon which their claims are based.” *Parrino*, 146 F.3d at 706; see also *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d, 1192, 1196 (3d Cir 1993).

Dated: June 2, 2008

MICHAEL J. AGUIRRE, City Attorney

By /s/ Joe Cordileone
 Joe Cordileone
 Senior Deputy City Attorney
 Attorneys for Defendant City of San Diego

EXHIBIT 6

1 Paula S. Rosenstein, Esq. (SBN 12624)
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4 Attorneys for Defendant
5 Tracy L. Means
6
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 CITY OF SAN DIEGO, a municipal
corporation and a Political Subdivision of the
11 State of California

12 Plaintiff,

13 v.

14 TRACY L. MEANS, (aka Tracy L. Williams)
an individual; MICHAEL HODGES, an
15 individual; ROBERTA THOMPSON, an
individual; AIRPORT BUSINESS
16 SOLUTIONS, INC., a Georgia Corporation;
Does 1-20, inclusive,

17 Defendants.
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CASE NO. GIC 858344

DEFENDANT'S AND RESPONDENT'S
NOTICE OF CROSS APPEAL

Judge: Hon. Joan M. Lewis
Dept.: 65

Notice of Appeal Filed: 1-31-08
Appellate Case No.: D051840

20 TO THE CLERK OF THE SUPERIOR COURT, ALL PARTIES AND THEIR ATTORNEYS OF
21 RECORD:

22 PLEASE TAKE NOTICE that defendant and respondent TRACY L. MEANS cross-appeals
23 from the court's ruling on January 4, 2008 partially denying Defendant's motion for attorneys fees and
24 specifically from the portion of the ruling denying Defendant's request to recover fees and costs
25 associated with prosecuting the companion case of *Means v. City of San Diego*, GIC 864419.

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1 The Order from that hearing was entered on January 4, 2008 and an appeal from that order was
2 filed by Plaintiffs on January 31, 2008.

3 Dated: 2/12, 2008

Respectfully submitted,

4 ROSENSTEIN, WILSON & DEAN, P.L.C.

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6 By: 

Paula S. Rosenstein, Esq.

7 Attorneys for Defendant Tracy L. Means
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EXHIBIT 7

COPY

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Attorneys for Defendant
Tracy L. Means

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

CITY OF SAN DIEGO, a municipal
corporation and a Political Subdivision of the
State of California

Plaintiff,

v.

TRACY L. MEANS, (aka Tracy L. Williams)
an individual; MICHAEL HODGES, an
individual; ROBERTA THOMPSON, an
individual; AIRPORT BUSINESS
SOLUTIONS, INC., a Georgia Corporation;
Does 1-20, inclusive,

Defendants.

CASE NO. GIC 858344

DEFENDANT'S AND RESPONDENT'S
NOTICE OF ABANDONMENT OF CROSS
APPEAL

Judge: Hon. Joan M. Lewis
Dept.: 65

Notice of Appeal Filed: 1-31-08
Appellate Case No.: D051840

TO THE CLERK OF THE SUPERIOR COURT, ALL PARTIES AND THEIR ATTORNEYS OF
RECORD:

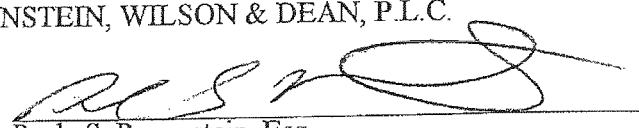
PLEASE TAKE NOTICE that defendant and respondent TRACY L. MEANS hereby abandons
the cross-appeal she previously filed in the above referenced case. The cross appeal related to the
Order entered on January 4, 2008.

Dated: 3/21, 2008

Respectfully submitted,

ROSENSTEIN, WILSON & DEAN, P.L.C.

By:


Paula S. Rosenstein, Esq.
Attorneys for Defendant Tracy L. Means

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DEFENDANT'S AND RESPONDENT'S NOTICE OF ABANDONMENT OF CROSS APPEAL